

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 4, 1994

EX PARTE OR LATE FILED RECEIVED

OCT 05 1994

Hon. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 202
Washington, D.C. 20554

FCC MAIL ROOM

BOOKET FILE COPY ORIGINAL

Re: PR File No. 94-SP3; Ex Parte Presentation

Dear Mr. Caton:

In accordance with 47 C.F.R. { 1.1206(a)(1), I am submitting herewith two copies of the enclosed letter with attachments sent to Kelly Cameron and Gina Harrison of the Private Radio Bureau. The enclosed letter with attachments documents the difficulties the California Public Utilities Commission has encountered in obtaining data reviewed and relied upon by the Cellular Telecommunications Industry Association in the above-referenced proceeding.

Sincerely,

Ellen S. LeVine
Principal Counsel

ESL:afm

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Kelly Cameron
Private Radio Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: PR Docket No. 94-105, Ex Parte Communication

Dear Mr. Cameron:

Please find attached correspondence between the California Public Utilities Commission ("CPUC") and the Cellular Telecommunications Industry Association ("CTIA"), documenting the continuing difficulty that the CPUC has encountered in attempting to gain access to information reviewed and relied upon in an affidavit presented by CTIA's witness in the above-referenced proceeding.

I have provided two copies of this letter and attached correspondence to the Secretary in accordance with Rule 1.1206 (a)(1).

Sincerely,

A handwritten signature in cursive script, reading "Ellen S. LeVine".

Ellen S. LeVine
Principal Counsel

cc: Gina Harrison

ESL:afm

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 4, 1994

VIA FACSIMILE AND FEDERAL EXPRESS

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OCT 05 1994

Michael F. Altschul
Vice President, General Counsel
Cellular Telecommunications Industry Ass'n
1250 Connecticut Avenue, NW, Suite 200
Washington, D.C. 20036

FCC MAIL ROOM

Re: September 26 CPUC Data Request to CTIA
PR Docket No. 94-105

Dear Mr. Altschul:

As we discussed in our telephone conversation today, the California Public Utilities Commission ("CPUC") has yet to receive the majority of information requested of the Cellular Telecommunications Industry Association ("CTIA") in a CPUC data request sent to you by facsimile on September 26, 1994. The information requested was either reviewed or relied upon by Professor Jerry Hausman in Appendices 1 through 4 attached to his affidavit in support of CTIA's opposition to the CPUC petition in PR Docket No. 94-105.

On September 29, 1994, you responded by letter to our request, and provided only the information requested in item 3 of our data request.^[1] You further indicated that with respect to publicly-available historical pricing information requested in item 1 of our request which was reviewed or relied upon by Professor Hausman, that CTIA is reluctant to provide the information because it was obtained from another consultant. You suggested in your letter that the CPUC contact that consultant directly.

1 Our records indicate that our letter was faxed to you at (202) 785-0721. Although you indicate in your letter that you never received our data request by facsimile on September 26, Brian Roberts of our office talked to you about the request prior to sending it that same day. At that time, after discussing the nature of the data, you indicated that Mr. Roberts should directly contact Mr. Hausman. In addition, on September 26 you left a message with Mr. Roberts with instructions for him to send by facsimile to Mr. Hausman the CPUC data request at the fax number you provided.

Michael F. Altschul
October 4, 1994
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Lastly, you indicated that carrier and market specific price and subscriber data was considered confidential by your members, and, at a minimum, with the agreement of your members, could only be provided under a protective order. Item 5 and that portion of item 6 referred to in item 5 of our data request are the only items which request information which would raise an issue of confidentiality and the need for a protective order. All of the other information in items 1-4, item 7 and most of item 6 of our request is public information for which no lawful claim of confidentiality exists.

In our telephone conversation today, you have changed your position and now indicate that CTIA refuses to produce the data requested in items 5 and part of item 6, even with the full protection of a protective order. Accordingly, CTIA's position is that the CPUC will have no access to this information in this proceeding in order to rebut the claims made by Professor Hausman.

With respect to item 1 of our request, I indicated in our conversation today that it is neither fair nor reasonable to place the burden on the CPUC to attempt to obtain public information provided by others to Professor Hausman and reviewed or relied upon by Professor Hausman in his affidavit. You responded that you would speak with Professor Hausman about providing the data specified. However, you indicated in response to my request, that you would not fix a deadline by which you would let me know whether the CPUC could obtain this data from CTIA, and if so, by when.

To date, over a week has elapsed since the CPUC faxed its data request to CTIA; however, with the exception of information requested in Item 3, we have received none of the other requested information. There is no lawful basis for withholding this information, particularly when this information is essential to enable the CPUC to rebut Mr. Hausman's claims.

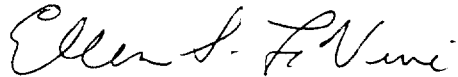
Because the CPUC must file its reply to oppositions to its petition by October 18, the CPUC needs a firm commitment by Friday, October 7, 1994 at 5 p.m. EST that CTIA will produce the information requested in the CPUC's September 26 data request for

Michael F. Altschul
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receipt by the CPUC no later than Tuesday, October 11, 1994.
Absent your agreement, the CPUC will move to strike Mr. Hausman's
affidavit from this proceeding.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Ellen S. LeVine".

Ellen S. LeVine
Principal Counsel

ESL:afm



Building The
Wireless Future.

CTIA

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax
202-736-3248 Direct Dial

Michael F. Altschul
Vice President,
General Counsel

September 29, 1994

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OCT 05 1994

FCC MAIL ROOM

Via Facsimile

Ellen S. LeVine, Esq.
State of California
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: CPUC Request for Hausman Data Set

Dear Ms. LeVine:

I am writing to acknowledge receipt of your letter dated September 26 requesting "the entire data set" used by Professor Jerry Hausman in the regression analyses set forth in Appendices 1, 2, and 3 of the Affidavit attached to CTIA's Opposition in FCC PR Docket No. 94-105. As I first received the letter this afternoon by first class mail, and not by facsimile as indicated, it is simply not possible for CTIA to provide all of the information today, as you request.

CTIA did provide Professor Hausman with some of the data included in your request. In particular, historical price information included within the scope of your first request (for 1989 through 1994 price information) was provided in the form of Paul Kagan Associates' Cellular Rates, published March 1992 (1991 MSA rates), and January 1994 (1993 MSA and RSA rates). Absent written permission from Paul Kagan Associates, CTIA is reluctant to provide you with this data. The Paul Kagan reports are available from Paul Kagan Associates, 126 Clock Tower Place, Carmel, CA 93923. Professor Hausman obtained all other cost data from sources other than CTIA.

CTIA also provided Professor Hausman with a list of the states that regulate cellular rates. See CPUC Request Number 3. This list is set forth in Table 10, pages 130-131, of the NARUC Report on the Status of Competition in

Intrastate Telecommunications, published in 1992 by the National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, DC 20044. A copy is attached.

CTIA does not have the other data you have requested. As you know, carrier and market specific price and subscriber data is highly confidential. It is so confidential that cellular carriers do not provide it to us, and we would not want it. Instead, this data was provided directly to Professor Hausman, and even then was provided under different claims of confidentiality.

As we discussed this afternoon, CTIA, as a trade association, is unable to authorize the release of the data carriers provided directly to Professor Hausman. However, CTIA is willing to work with you, Dr. Hausman, and our member carriers to reach an agreement that meets each party's legitimate needs. At a minimum, the agreement would need to be in the form a Protective Order or Confidentiality Agreement that would include your commitment (1) that the use of any and all data obtained pursuant to this request would be strictly limited to the FCC's PR Docket No. 94-105, and (2) that there would be no disclosure of any carrier and/or market specific data.

I hope we will be able to reach an agreement that will provide you with all the data you seek. As you know, Professor Hausman in other work has relied on public information for his analyses, and there should be no problem in providing such public data with a minimum of delay. Release of non-public data, however, must await the review of your request by Professor Hausman and the affected cellular carriers, and the agreement of all parties to an appropriate protective order.

Sincerely,


Michael Altschul

cc: Professor Hausman

TABLE 10 - REGULATION OF CELLULAR COMMUNICATIONS SERVICE

AGENCY **	DEGREE OF REGULATION EXERCISED (F, P, N)	AGENCY REQUIRES FOR WHOLESALE SALES:			AGENCY REQUIRES FOR RETAIL SALES:			CHANGING REG- ULATION UNDER CONSIDERATION DOCKET NO.?	NUMBER OF CELLULAR CARRIERS
		CPCN *	TARIFF FILING	USOA *	CPCN *	TARIFF FILING	USOA *		
ALABAMA PSC	NONE 2/	NO	NO	NO	NO	NO	NO		8
ALASKA PUC	FULL	YES	YES	YES	YES	YES	YES		14
ARIZONA CC	PARTIAL	YES	YES		NO	NO	NO		32
ARKANSAS PSC	PARTIAL	YES	NO	NO	YES	NO	NO		39
CALIFORNIA PUC	FULL	YES	YES	YES	YES	YES	YES		
COLORADO PUC	NONE	NO	NO	NO	NO	NO	NO		6
CONNECTICUT DPUC	PARTIAL	YES	YES	NO	NO	NO	NO		
DELAWARE PSC	NONE	NO	NO	NO	NO	NO	NO		2
DC PSC	NONE	NO	NO	NO	NO	NO	NO		
FLORIDA PSC	NONE	NO	NO	NO	NO	NO	NO		
GEORGIA PSC	NONE	NO	NO	NO	NO	NO	NO		
HAWAII PUC	FULL	YES	YES	NO	YES	YES	NO	YES	5
IDaho PUC	NONE	NO	NO	NO	NO	NO	NO		
ILLINOIS CC	PARTIAL 4/	YES 4/	YES 3/	YES 15/	YES 4/	YES 3/	YES 15/	YES	28
INDIANA URC	PARTIAL 6/	NO	NO		NO	NO			36
IDAHO US	NONE	NO	NO	NO	NO	NO	NO		
KANSAS SCC	NONE	NO	NO	NO	NO	NO	NO		34
KENTUCKY PSC	5/ PARTIAL	YES	YES	YES	NO	NO	YES		23
LOUISIANA PSC	FULL	YES	1/ INFO ONLY		YES	1/ INFO ONLY			
MAINE PUC	7/ NONE	NO	NO	NO	NO	NO	NO	DEREGULATED	
MARYLAND PSC	NONE 13/	NO	NO	NO	NO	NO	NO	DEREGULATED	
MASSACHUSETTS DPUC	FULL	YES	YES		YES	YES			28
MICHIGAN PSC	16/ NONE	NO	NO	NO	NO	NO	NO	DEREGULATED	
MINNESOTA PUC	NONE	NO	NO	NO	NO	NO	NO		
MISSISSIPPI PSC	FULL	YES	1/ INFO ONLY		YES	YES			16
MISSOURI PSC	NONE	NO	NO	NO	NO	NO	NO	DEREG. 1986	
MONTANA PSC	NONE	NO	NO	NO	NO	NO	NO		3
NEBRASKA PSC	NONE	NO	NO	NO	NO	NO	NO		16
NEVADA PSC	FULL	YES	6/ YES	YES	YES	6/ YES	YES		4
NEW HAMPSHIRE PUC	NONE	NO	NO	NO	NO	NO	NO		
NEW JERSEY BRC	NONE	NO	NO	NO	NO	NO	NO		20
NEW MEXICO SCC	PARTIAL	YES	YES		NO	NO		S.2660/A.5789	53
NEW YORK PSC	PARTIAL 2/	YES	YES		YES	YES		P-100, SUB 79	46
NORTH CAROLINA UC	NONE 12/	NO	NO	NO	NO	NO	NO		13
NORTH DAKOTA PSC	PARTIAL 9/	NO	NO	NO	NO	NO	NO		
OHIO PUC	PARTIAL	YES	YES	YES	NO	NO	NO	YES 2/	33
OKLAHOMA CC	NONE	NO	NO	NO	NO	NO	NO		9
OREGON PUC	NONE	NO	NO	NO	NO	NO	NO		
PENNSYLVANIA PUC	NONE	NO	NO	NO	NO	NO	NO		
RHODE ISLAND PUC	NONE	NO	NO	NO	NO	NO	NO		
SOUTH CAROLINA PSC	PARTIAL	YES	YES	YES	NO	NO	NO	NO	21
SOUTH DAKOTA PSC	NONE	NO	NO	NO	NO	NO	NO	DEREGULATED	24
TENNESSEE PSC	PARTIAL 3/	YES	YES		NO	NO	NO		
TEXAS PUC	NONE	NO	NO	NO	NO	NO	NO		5
UTAH PSC	11/ PARTIAL	NO	NO		NO	NO			
VERMONT PSC	NONE	NO	NO	NO	NO	NO	NO		24
VIRGINIA SCC	PARTIAL	YES	YES		NO	NO			13
WASHINGTON UTC	NONE	NO	NO	NO	NO	NO	NO		8
WEST VIRGINIA PSC	FULL	YES	YES	NO	YES	YES	NO		40
WISCONSIN PSC	PARTIAL 3/	YES	NO		NO 14/	NO			8
WYOMING PSC	PARTIAL	YES	YES		NO	NO	NO		
VIARU ISLANDS PSC	NONE	NO	NO	NO	NO	NO	NO	YES DKT 332	3
QUEBEC TB	10/ PARTIAL								2

* CPCN-Certificate of Public Convenience and Necessity (or equivalent); USOA-Uniform System of Accounts

FOOTNOTES - TABLE 10

- 1/ Tariffs filed for information purposes only.
- 2/ Considering whether to deregulate or streamline regulation.
- 3/ Monopoly markets are regulated.
- 4/ Streamlined certification process.
- 5/ Agency exercises full jurisdiction over wholesale sales of facilities-based cellular service providers and probably has jurisdiction over retail sales of cellular service, but generally forbears from exercising it.
- 6/ Minimum/maximum rate tariffs approved by Commission.
- 7/ All mobile telecom services deregulated effective October 1991.
- 8/ Carriers file general company information only; Commission will continue to observe.
- 9/ Carriers register and file annual reports only.
- 10/ Cellular service offered by a regulated telephone company is scrutinized to ensure no cross-subsidization.
- 11/ Cellular service is deregulated when both wireline and non-wireline carriers operate in a service area.
- 12/ Deregulated early 1992 as fully competitive; UC regulates only terms/conditions of interconnection with LECs. This is on appeal by the State Attorney General.
- 13/ All radio-common carriers deregulated effective 7/1/88.
- 14/ Unless affiliated with wholesale provider.
- 15/ Carrier may request a waiver.
- 16/ PA 179 of 1991, effective 1/1/92, removed cellular from PSC jurisdiction.